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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 KATHERINE B., )

08 Plaintiff, )

09 v. )

10 ANDREW M. SAUL,  
Commissioner of Social Security, )

11 Defendant. )

) CASE NO. C20-5695-MAT

) ORDER RE: SOCIAL SECURITY  
) DISABILITY APPEAL

12 \_\_\_\_\_ )  
13 Plaintiff proceeds through counsel in her appeal of a final decision of the  
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner  
15 denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before  
16 an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the  
17 administrative record (AR), and all memoranda of record, this matter is REVERSED and  
18 REMANDED for further administrative proceedings.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1993.<sup>1</sup> She graduated from high school and had some  
21 online schooling after that, and previously worked as a sales associate, tanning bed cleaner,

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<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 and receptionist. (AR 45, 256.)

02 Plaintiff applied for SSI on March 29, 2017. (AR 217-22.) That application was  
03 denied and Plaintiff timely requested a hearing. (AR 103-06, 110-15.)

04 In April 2019, ALJ Eric Basse held a hearing, taking testimony from Plaintiff and a  
05 vocational expert. (AR 39-79.) In June 2019, the ALJ issued a decision finding Plaintiff not  
06 disabled. (AR 15-22.) Plaintiff timely appealed. The Appeals Council denied Plaintiff's  
07 request for review in May 2020 (AR 1-6), making the ALJ's decision the final decision of the  
08 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

### 09 **JURISDICTION**

10 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §  
11 405(g).

### 12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining  
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
15 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had  
16 not engaged in substantial gainful activity since the application date. (AR 17.) At step two, it  
17 must be determined whether a claimant suffers from a severe impairment. The ALJ found  
18 severe Plaintiff's degenerative disc disease and obesity. (AR 17-18.) Step three asks whether  
19 a claimant's impairments meet or equal a listed impairment. The ALJ found that Plaintiff's  
20 impairments did not meet or equal the criteria of a listed impairment. (AR 18.)

21 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
22 assess residual functional capacity (RFC) and determine at step four whether the claimant has

01 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
02 performing light work with additional limitations: she can frequently climb ramps, stairs,  
03 ladders, ropes, and scaffolds. She can frequently balance, stoop, kneel, crouch, and crawl.  
04 She cannot have concentrated exposure to vibrations or hazards. (AR 18.) With that  
05 assessment, the ALJ found Plaintiff capable of performing past relevant work as a sales clerk.  
06 (AR 21.)

07 If a claimant demonstrates an inability to perform past relevant work, the burden shifts  
08 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
09 an adjustment to work that exists in significant levels in the national economy. Because the  
10 ALJ found Plaintiff capable of performing her past relevant work and thereby not disabled,  
11 the ALJ did not proceed to step five. (AR 21-22.)

12 This Court's review of the ALJ's decision is limited to whether the decision is in  
13 accordance with the law and the findings supported by substantial evidence in the record as a  
14 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
15 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
16 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
17 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
18 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
19 F.3d 947, 954 (9th Cir. 2002).

20 Plaintiff argues the ALJ erred in assessing the medical evidence and her subjective  
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01 testimony, and in failing to assess lay statements provided by Plaintiff's mother and sister.<sup>2</sup>  
02 The Commissioner argues that the ALJ's decision is supported by substantial evidence and  
03 should be affirmed.

04 Medical opinion evidence

05 Plaintiff raises several distinct arguments regarding the ALJ's assessment of the  
06 medical evidence, each of which the Court will address in turn.

07 Opinion of William Chalstrom, Ph.D.

08 Dr. Chalstrom examined Plaintiff in June 2017 and wrote a narrative report describing  
09 Plaintiff's condition and limitations. (AR 364-67.) Dr. Chalstrom's medical source statement  
10 reads, in its entirety:

11 The claimant is able to complete simple repetitive tasks and would also be able  
12 to follow more complex instructions. Her memory is intact, as indicated by  
13 being able to remember three out of three objects after five minutes and 7-  
14 digits immediately. Her concentration is good, as shown by her ability to do  
15 serial 7s without error and to spell *world* correctly backward. She is socially  
16 isolated, but does have a very good relationship with her mother and sister.  
17 Additionally, she was friendly and cooperative throughout our session and  
18 appears that she would be able to get along with others in a work situation.  
19 She was able to work as a receptionist for 3-years, before being let go when  
20 she started using crutches.

17 (AR 367.) The ALJ found this opinion "both persuasive and supported by the record." (AR  
18 21.) Given Dr. Chalstrom's failure to identify any mental limitations in his medical source  
19 statement, the ALJ interpreted Dr. Chalstrom's opinion to mean that Plaintiff "has no  
20 significant mental health functional limitations." (*Id.*)

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21 <sup>2</sup> Plaintiff also assigns error to the ALJ's RFC assessment and step-four findings, but these  
22 assignments of error depend entirely on the other assignments of error and need not be addressed  
separately. Dkt. 18 at 16-17.

01 Plaintiff argues that the ALJ erred in failing to note other sections of Dr. Chalstrom's  
02 opinion, such as his diagnosis of adjustment disorder with depressed mood, Plaintiff's social  
03 isolation, and Dr. Chalstrom's opinion that Plaintiff's prognosis is guarded. Dkt. 18 at 3. But  
04 these features of Dr. Chalstrom's opinion do not indicate that Plaintiff has any particular  
05 functional limitations, and thus do not show error in the ALJ's interpretation of Dr.  
06 Chalstrom's opinion. Therefore, Plaintiff has not shown that the ALJ's assessment of Dr.  
07 Chalstrom's opinion is erroneous.

08 Miscellaneous medical findings

09 Plaintiff goes on to devote pages of her opening brief to a summary of miscellaneous  
10 medical findings, without tying these findings to a particular error in the ALJ's decision. Dkt.  
11 18 at 3-5. This section of Plaintiff's brief does not advance her assignment of error and need  
12 not be addressed further.

13 Consultative examination

14 Plaintiff argues that because no treating or examining provider wrote an opinion  
15 describing Plaintiff's physical limitations, the ALJ should order a consultative examination on  
16 remand. Dkt. 18 at 6. Plaintiff makes no effort to show that the ALJ had a duty to order such  
17 an examination before rendering the decision under review, and thus has not established error  
18 in the ALJ's decision in this regard. *See Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir.  
19 2001) (explaining that "[a]n ALJ's duty to develop the record further is triggered only when  
20 there is ambiguous evidence or when the record is inadequate to allow for proper evaluation  
21 of the evidence.").

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01 State agency opinions

02 Plaintiff argues that the ALJ erred in finding the State agency medical consultants'  
03 opinions to be partially persuasive, because the consultants did not have access to records  
04 after July 2017 and thus their opinions were not based on a review of the entire record. Dkt.  
05 18 at 6. But the ALJ considered the degree to which the consultants' opinions were consistent  
06 with the medical record and Plaintiff's testimony, and explained that the consultants did not  
07 adequately consider the impact of Plaintiff's pain medication. (AR 21.) Plaintiff has failed to  
08 show that the ALJ erred in not considering the State agency opinions in the context of the  
09 entire record.

10 Plaintiff's subjective statements

11 The ALJ discounted Plaintiff's subjective allegations because (1) the record contained  
12 evidence of normal neurological examination results that are inconsistent with Plaintiff's  
13 allegations, (2) Plaintiff's alleged "nerve damage" in her legs was unsupported by any nerve  
14 testing, and (3) the record failed to corroborate Plaintiff's alleged need for crutches or other  
15 functional limitations. (AR 19-20.) Plaintiff contends that the ALJ's reasons are not clear  
16 and convincing, as required in the Ninth Circuit.<sup>3</sup> See *Burrell v. Colvin*, 775 F.3d 1133, 1136-  
17 37 (9th Cir. 2014).

18 Plaintiff argues that all of the ALJ's reasons to discount her testimony amount to a  
19 misapplication of "the objective evidence test," because the ALJ could not "reject her  
20 testimony about the extent or severity of her symptoms and limitations based solely upon  
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22 <sup>3</sup> Plaintiff's opening brief also includes a lengthy summary of her hearing testimony that  
does not advance her arguments in support of her assignment of error. Dkt. 18 at 8-13.

01 whether objective evidence supports the degree of limitations” she alleges. Dkt. 18 at 7. The  
02 Court agrees that the ALJ relied on a lack of corroboration in the medical record, rather than  
03 pointing to specific contradictions in the record, and that this reasoning alone cannot support  
04 the ALJ’s assessment of Plaintiff’s testimony. *See Rollins v. Massanari*, 261 F.3d 853, 857  
05 (9th Cir. 2001) (“While subjective pain testimony cannot be rejected on the sole ground that it  
06 is not fully corroborated by objective medical evidence, the medical evidence is still a  
07 relevant factor in determining the severity of the claimant’s pain and its disabling effects.”).  
08 Although the Commissioner contends that the ALJ “did not rely on the objective medical  
09 evidence alone; it was merely one factor in his analysis” (Dkt. 19 at 7), the Commissioner  
10 does not identify any other reasoning that the ALJ provided as a basis for discounting  
11 Plaintiff’s testimony, and the Court’s review of the ALJ’s decision does not reveal any.

12       The Court therefore finds that the ALJ erred in discounting Plaintiff’s testimony  
13 without providing clear and convincing reasons. In light of this finding, the Court rejects the  
14 Commissioner’s argument that the ALJ’s failure to provide any reason to discount the lay  
15 statements was harmless because those statements were similar to Plaintiff’s discredited  
16 allegations. Dkt. 19 at 18. On remand, the ALJ shall reconsider Plaintiff’s testimony and the  
17 lay statements and either credit them, or provide legally sufficient reasons to discount them.

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01 **CONCLUSION**

02 For the reasons set forth above, this matter is REVERSED and REMANDED for  
03 further administrative proceedings.

04 DATED this 30th day of April, 2021.

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07 Mary Alice Theiler  
08 United States Magistrate Judge  
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